

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Dec 18, 2023**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ORAY PAPA FIFER,

Defendant.

NO: 2:21-CR-9-RMP-1

ORDER GRANTING  
DEFENDANT’S MOTION FOR  
EARLY TERMINATION OF  
SUPERVISED RELEASE

BEFORE THE COURT, without oral argument, is Defendant Oray Papa Fifer’s Motion for a Correction of Illegal Sentence and Termination of Supervised Release, ECF No. 31. The Government responded, ECF No. 40, and Defendant replied, ECF No. 41. Having reviewed the motion, the record, and the relevant law, the Court is fully informed.

The Court may terminate an individual’s supervised release obligations “at any time after the expiration of one year . . . if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice.” 18 U.S.C. § 3583(e)(1). The Court is to consider the factors set forth in 18 U.S.C. §§

1 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7). *Id.*

2 District courts have broad discretion when deciding whether to terminate a  
3 defendant's term of supervised release. *United States v. Emmett*, 749 F.3d 817,  
4 819 (9th Cir. 2014).

5 Defendant was convicted by a jury of four counts of a nine-count Superseding  
6 Indictment: (1) Conspiracy to Distribute Controlled Substances, including but not  
7 limited to cocaine, methamphetamine, and marijuana, in violation of 21 U.S.C. §  
8 841(a)(1) and § 846; (2) Distribution of Cocaine, in violation of 21 U.S.C. §  
9 841(a)(1); (3) Possession with Intent to Distribute Heroin, in violation of 21 U.S.C. §  
10 841(a)(1); and (4) Use of a Firearm in a Drug Trafficking Crime, in violation of 21  
11 U.S.C. § 924(c). ECF No. 1-3 at 1. On November 16, 2000, Defendant was  
12 sentenced in the District of Montana to twenty years custody for Count One, twenty  
13 years for Count Two, and twenty-four months for Count Three, all to be served  
14 concurrently. *Id.* at 2. He was sentenced to sixty months for Count Four, to be  
15 served consecutively to the other terms imposed. *Id.* His custodial sentence was  
16 followed by five years of supervised release. *Id.* Defendant's term of supervised  
17 release began on August 4, 2020.<sup>1</sup> ECF No. 20.

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19 \_\_\_\_\_  
20 <sup>1</sup> Defendant's motion states that he was released on September 27, 2020, and  
21 reported to his Supervised Release officer "on and about September 30, 2020."  
ECF No. 31 at 4. However, the supervising probation officer indicated in his  
petition on April 13, 2022, that Defendant's supervision began August 4, 2020.

1 Defendant's motion, initially filed *pro se*, argues that his sentence of five years  
2 of supervised release was unlawful under 18 U.S.C. § 3583(b)(2). ECF No. 31 at 2–  
3 3. Defendant argues that his charges were lowered from Class A felonies to Class C  
4 felonies, but that he was sentenced to five years of supervised release, in violation of  
5 the statutory maximum term of three years supervised release under 18 U.S.C. §  
6 3583(b)(2) for a Class C felony. *Id.* The Government responds that Defendant was  
7 convicted of Title 21 offenses; accordingly, 21 U.S.C. § 841, not 18 U.S.C. §  
8 3583(b)(2), is the controlling provision; and 21 U.S.C. § 841 authorizes Defendant's  
9 five-year term of supervised release. ECF No. 40 at 2. In Defendant's reply, in  
10 which he is represented by the Federal Defenders of Eastern Washington and Idaho,  
11 he "acknowledges unfavorable case law" and appears to abandon his argument that  
12 his sentence is illegal. ECF No. 41 at 5–6. Rather, he argues for early termination.  
13 *Id.* at 3–5.

14 Defendant requests early termination of his supervised release for three  
15 reasons. *Id.* at 5. First, he argues that the original supervised release term of five  
16 years is greater than necessary. *Id.* at 5–6. Defendant notes that 18 U.S.C. § 3583  
17 limits supervised release to not more than three years for a Class C felony. *Id.* at 5.  
18 Defendant acknowledges that his case is controlled by 21 U.S.C. § 841(b)(1)(C),  
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20 ECF No. 20. Accordingly, the Court will rely on the date in the Probation  
21 Officer's report.

1 which supersedes the penalties in § 3583(b). *Id.* at 6. However, because there is no  
2 maximum penalty of supervised release in § 841(b)(1)(C), Defendant argues that  
3 three years was sufficient. *Id.*

4 Second, Defendant argues that his participation in programming and services  
5 while incarcerated equipped him to quickly and easily integrate back into society  
6 without additional supervised release time. *Id.* at 7–8. While incarcerated, he  
7 obtained an Associate in Arts degree and completed various other classes. *See* ECF  
8 Nos. 41-1 and 41-2. Additionally, the Bureau of Prisons Unit Manager wrote a letter  
9 of support for Defendant, as did a personal injury lawyer appointed to represent  
10 Defendant in a suit during Defendant’s incarceration. *See* ECF Nos. 41-3 and 41-4.

11 Finally, Defendant argues that his conduct over the past three years while on  
12 supervised release shows that early termination is appropriate. ECF No. 41 at 8–13.  
13 Defendant points to the strong support system he has established, including family  
14 both in and out of state. *Id.* at 8. He also notes his sustained work as a flagger with  
15 Spokane Traffic Control, and his desire to acquire a license to practice law in the  
16 future. *Id.* at 9–10. Defendant is a member of the board of The Way to Justice, a  
17 local non-profit organization for those who have been through the criminal legal  
18 system. *Id.* at 10. Additionally, Defendant alleges that terminating his supervised  
19 release would allow him to pursue his dream of obtaining his license to practice law  
20 under the Washington State Law Clerk Program. *Id.* at 11.

1 Defendant contends that he has been largely successful while on supervised  
2 release. *Id.* He acknowledges his violation in April 2022, when he was arrested for  
3 driving under the influence, but he asserts that he took responsibility for his conduct  
4 and completed the required substance use classes. *Id.* Defendant notes that this was  
5 his only violation during three years of supervision, and the Court imposed no  
6 sanctions. *Id.* at 11–12.

7 The Government indicated that it defers to the Court on whether additional  
8 supervised release is appropriate. ECF No. 40 at 2. Defendant's Supervising  
9 Probation Officer states that Defendant has done well for himself and is very easy to  
10 supervise. The Probation Officer indicates that there is not much that the Probation  
11 Office can offer Defendant at this point, aside from occasional check-ins.

12 The Court is satisfied that early termination is warranted by the conduct of  
13 Defendant and the interest of justice. *See* 18 U.S.C. § 3583(e)(1). The Court finds  
14 that the nature and circumstances of the offense and the history and characteristics of  
15 the defendant in particular weigh in favor of early termination. *See* 18 U.S.C. §  
16 3553(a)(1). Over 23 years have elapsed since Defendant's actions that resulted in his  
17 lengthy custodial sentence imposed in 2000, and he has certainly shown the capacity  
18 to take responsibility, learn, and grow from his actions. The Court is particularly  
19 impressed by the letters of support written on behalf of Defendant. *See* ECF Nos. 41-  
20 3, 41-4, and 41-9.

1 The Court finds that there is not a significant need for additional supervised  
2 release, as Defendant has shown the ability to refrain from criminal activity while  
3 released and to retain steady employment. *See* 18 U.S.C. §§ 3553(a)(2)(B), (a)(2)(C),  
4 (a)(2)(D). In addition, the Court finds that United States Probation Office resources  
5 are better utilized supervising other individuals. The Court commends Defendant for  
6 his improvement and expects him to continue his progress and commitment to a law-  
7 abiding and productive life.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. Defendant's Motion for Termination of Supervised Release, **ECF No. 31**, is  
10 **GRANTED.**

11 2. Defendant shall be released immediately from the supervision of the United  
12 States Probation Office.

13 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this Order  
14 and provide copies to counsel and to the United States Probation Office.

15 **DATED** December 18, 2023.

16  
17 *s/ Rosanna Malouf Peterson*  
18 ROSANNA MALOUF PETERSON  
19 Senior United States District Judge  
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